

respondent's position. If the respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency, the respondent shall include in the answer evidence of such highest rate.

(2) Further proceedings shall be held only by order of the Board and only when necessary for full and fair resolution of the issues arising from the application. Such proceedings shall be minimized to the extent possible and shall not include relitigation of the case on the merits. A request that the Board order further proceedings under this section shall describe the disputed issues and explain why additional proceedings are necessary to resolve those issues.

(e) *Decision.* Any award ordered by the Board shall be paid pursuant to 6101.36.

6101.36 Payment of Board awards [Rule 136].

(a) *Generally.* When permitted by law, payment of Board awards may be made in accordance with 31 U.S.C. 1304. Awards by the Board pursuant to the Equal Access to Justice Act shall be directly payable by the respondent agency over which the applicant has prevailed in the underlying appeal.

(b) *Conditions for payment.* Before a party may obtain payment of a Board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) Both parties must, by execution of a Certificate of Finality, waive their rights to relief under 6101.32 and 6101.33 and also their rights to appeal the decision of the Board; or

(2) The time for filing an appeal must expire.

(c) *Procedure for filing of certificates of finality.* Whenever the Board issues a decision or an order awarding a party any amount of money, it will attach to the copy of the decision sent to each party forms such as those illustrated in the appendix to this part. The conditions for payment prescribed in paragraph (b)(1) of this section are satisfied if each of the parties returns a completed and duly executed copy of this form to the Board. When the form is

executed on behalf of an appellant or applicant by an attorney or other representative, proof of signatory authority shall also be furnished. Upon receipt of completed and duly executed Certificates of Finality from the parties, the Board will forward a copy of each such certificate (together with proof of signatory authority, if required) and a certified copy of its decision to the responsible agency for certification and transmission to the United States Department of the Treasury for payment.

(d) *Procedure in absence of certificate of finality.* When one or both of the parties fails to submit a duly executed Certificate of Finality, but the conditions for payment have been satisfied as provided in paragraph (b)(2) of this section, the appellant or applicant may file a written request that the Board forward its decision to the responsible agency for certification and transmission to the United States Department of the Treasury for payment. Thereupon, the Board will forward a copy of that request and a certified copy of its decision to the responsible agency.

(e) *Stipulated award.* When an appeal is settled, the parties may file with the Board a stipulation setting forth the amount of the award and stating

(1) That they will not seek reconsideration of, or relief from, the Board's decision, and

(2) That they will not appeal the decision. The Board will adopt the parties' stipulation by decision. The Board's decision under this paragraph is an adjudication of the case on the merits.

[61 FR 52349, Oct. 7, 1996, as amended at 70 FR 48883, Aug. 22, 2005]

6101.37 Record on review of a Board decision [Rule 137].

(a) *Record on review.* When a party has appealed a Board decision to the United States Court of Appeals for the Federal Circuit, the record on review shall consist of the decision sought to be reviewed, the record before the Board as described in 6101.12, and such other material as may be required by the Court of Appeals.

(b) *Notice.* At the same time a party seeking review of a Board decision files